

**Response to Comments - Conditional Waiver for Discharges from Irrigated Lands
(April 5, 2005 deadline)**

1.	Department of Water and Power the City of Los Angeles-(DWP)
2.	Southern California Edison-(Edison)
3.	Newhall Land-(Newhall)
4.	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County-(Ventura)

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1.1	Los Angeles Department of Water and Power	4-5-05	This waiver impacts the very low income and disadvantaged. Most of Los Angeles Department of Water and Power's nursery sites are secondary land rights-of-way that are licensed out to lower income small wholesale nurseries who rely on their nursery business as their sole source of income to support and feed their families. These nurseries make little revenue for the department.	Nurseries within MS4 municipal storm water footprints will remain permitted through that program and will not be required to enroll in the Conditional Waiver. Nursery operations not covered by MS4 permits will be eligible for coverage under the Conditional Waiver. Regional Board staff expects that most nurseries will be covered under MS4 permits.
1.2	Los Angeles Department of Water and Power	4-5-05	The conditional waiver is a regulatory requirement that carries with it potential liabilities for LADWP above and beyond what is being stipulated in the license agreement (between DWP and nursery operator).	If a nursery is eligible for coverage under the Conditional Waiver, then both owner and operator of the land are liable. This could increase the liability of LADWP as the current licenses hold the agency harmless for meeting most regulatory requirements on the property. However, further delineation of liabilities could be stipulated in the license agreements. See section I.2 of the Order.
1.3	Los Angeles Department of Water and Power	4-5-05	The extent of the program, as written, would appear to include those nurseries that don't utilize broadcast irrigation and that keep their plants in pots. Nurseries with this type of irrigation would appear to have little, if any, runoff and therefore little impact to either groundwater or surface water.	The nurseries about which the LADWP is concerned are mostly (if not entirely) situated on MS4 footprints, and therefore would be covered by existing MS4 permits.
1.4	Los Angeles Department of Water and Power	4-5-05	The definition of "irrigated lands" as written seems to include those community farmlands on rights-of-way that are licensed by senior citizens. These small plots of land, which are mostly organic crops (ie, no pesticide use), have little or no impact on water quality and are often used by elderly senior citizens as a supplemental food source.	Most (if not all) of these community farmlands are situated on MS4 footprints, and therefore would be covered by existing MS4 permits, if applicable.
1.5	Los Angeles Department of Water and Power	4-5-05	LADWP believes that many of the nursery sites contribute little if any water quality impacts due to their locations, setup, etc.	Water quality impacts from the nurseries of concern would continue to be regulated under existing MS4 permits.
1.6	Los Angeles Department of	4-5-05	The Regional Board had been focusing on the large agricultural community of Ventura County and therefore	Regional Board staff expects that most (if not all) Los Angeles County nurseries will be covered under the MS4 permit program.

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	Water and Power		LADWP was unaware that small wholesale nurseries were included in this conditional waiver.	
2.1	Southern California Edison	4/5/05	Edison believes it is important that these nursery operations, collectively as a major stakeholder, are notified and educated regarding the stringent and potentially costly requirements set forth by the Regional Board in the Conditional Waiver. It is our understanding that these stakeholders have not yet been notified or given the opportunity to review and comment on the Conditional Waiver.	Regional Board staff expects that most of these nurseries of concern will be covered under MS4 permits, and therefore will experience no regulatory change. The Conditional Waiver has been noticed in newspapers dated _____ and _____ and is available on-line at the Regional Board website for public review and comment.
2.2	Southern California Edison	4/5/05	Edison is concerned that the requirements in this conditional Waiver are complicated and potentially costly.	The requirements of the Conditional Waiver are explained in both the Order and the Monitoring and Reporting Programs. The requirements are established in order to protect the waters of the state and to achieve water quality objectives, and are not purposefully complicated. The potential costs of the Conditional Waiver have been examined. The costs of the Waiver's reporting requirements are both comparable to those of other regions and commensurate with the need for the water quality reports.
2.3	Southern California Edison	4/5/05	Edison is sensitive to those nursery owners who may go out of business due to the requirements of the Conditional Waiver, and are willing to work with the Regional Board to discuss alternative compliance/monitoring options for these small nursery operations that were clearly not the intended target of this Conditional Waiver. Edison and the Regional Board may be able to assist these small nursery operations by developing a modified group monitoring scenario that is both cost-effective and appropriate for the type of activities performed.	Regional Board staff expects that most of these nurseries of concern will be covered under the MS4 permit program. For those nurseries that are eligible for coverage under the Conditional Waiver, some economic relief may be available. Under the Individual Monitoring and Reporting Program, the last paragraph of Section I states: "For Individual Dischargers with less than 10 acres of irrigated lands, the Executive Officer may revise some of the monitoring requirements based on demonstration by the discharger that the monitoring imposes financial hardship. Relief from some monitoring and reporting requirements will not be considered for discharges that do not meet WQOs."
3.1	Newhall Land and Farming	4/5/05	The Conditional Waiver currently provides that a primary criteria for determining Low-Risk Discharger status is that no sediment may move off the property, even during storm events. Such a standard cannot be feasibly attained, because of large storm events, such as those	NOI's include the growers' description of why a low risk classification should be applied. The Executive Officer retains the option to classify an enrollee as low risk based on the evidence submitted. Federal NRCS, Ventura County RCD and UCcoop provide extensive recommendation on sediment control and storm

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			experienced this year.	water management.
3.2	Newhall Land and Farming	4/5/05	The cost information provided only considers the analytical costs associated with monitoring of a limited number of sites in Ventura County. However, monitoring sites presumably will be required in LA County as well, and those sites will have monitoring costs.	Regional Board staff expects that there will be a limited number of monitoring sites in Los Angeles County. The location of these sites will depend on the number and nature of the Discharge Groups that form, as well as the agricultural properties to be covered under the Conditional Waiver, and are subject to Executive Officer approval.
3.3	Newhall Land and Farming	4/5/05	Section D. of the Waiver sets forth certain discharge prohibitions, which are stated in overbroad terms. Specifically, Section D.1 prohibits the discharge of any residential, commercial or municipal “wastes” to irrigated lands.	The wavier prohibits non agricultural discharges onto irrigated lands covered under the wavier. All discharges to waters of the State are currently or will be regulated.
4.1	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	Finding 22- As written, the finding implies that a WQMP is a required condition of the Conditional Waiver in all circumstances. This is not true. Under the conditions in the waiver, a WQMP is required for specific pollutants when receiving water limits or applicable water quality objectives are not met. To clarify the waiver conditions and to provide for consistency within the language of the waiver, we recommend that the words “if necessary” be added immediately after the reference to WQMP.	Regional Board Staff agrees with the comment and has added the words “if necessary”.
4.2	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	Finding 26-This finding discusses the need for monitoring and monitoring reports as related to the Conditional Waiver. The finding also claims that staff analysis shows that monitoring costs constitute a small portion of the agricultural production costs and are comparable to other monitoring costs for Waivers in other Regions. We do not believe that this finding is supportable based on the information contained in the record to date. California Water Code section 13141 requires that prior to the implementation of any agricultural water quality control program, for which the Conditional Waiver is, an	The revised cost estimate accounts for total program costs and identifies sources of funding that may be used to offset those costs. See Appendix 10.

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			estimate of the total cost of such a program and identification of potential sources of financing must be provided. In other words, the Regional Board must estimate the total costs of this program prior to adoption. This would include administrative costs for groups or individuals, costs related to QAPP preparation, costs for BMP implementation, state fees that may be adopted and other costs not currently accounted for in Appendix 12.	
4.3	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	<p>Finding 27 [This is now #29]- The language of this finding is not consistent with the language of the <i>Monitoring and Reporting Program for Discharger Groups</i>. The <i>Monitoring and Reporting Program</i> requires the Monitoring and Reporting Plan (MRP) to describe sample sites, locations, land use, chemicals used, etc. and that the MRP must be approved by the Executive Officer. It also requires that monitoring be expanded upstream when water quality objectives are exceeded and that major drainages must be part of the monitoring program. The <i>Monitoring and Reporting Program</i> draft resolution does not require Groups to monitor at the edge of individual group members fields if the group does not discharge to receiving water. To ensure consistency with the intent of the program, we recommend the following amendment:</p> <p>‘Under MRPs Nos. CI-8835 and CI-8836, Individual Discharger and Discharger Group subject to this Order that do not discharge directly to a receiving water listed on Appendix 4 will monitor irrigation return flows and stormwater runoff as it leaves the individual’s property <u>are required to monitor irrigation return flows and stormwater runoff as it leaves the individual’s property, or in the receiving water as indicated in the applicable MRP and approved by the Executive Director.</u>’</p>	Regional Board staff agrees with this comment. See Finding #29 of the Order for the final language.
4.4	Ventura County	4/5/05	Finding 27 [Now #29] also needs to be amended to	Regional Board staff agrees with this comment. The requested

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	Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.		ensure that compliance with water quality objectives is determined in the receiving waters, and not at the edge of field. To ensure that the <i>Conditional Waiver</i> is applied correctly, we recommend the following amendment: ‘If results from the monitoring programs indicate that water quality objectives are exceeded <u>in the receiving water monitoring location</u> , the individual or group will be required to submit a WQMP, as described in the MRPs Nos. CI-8835 and CI-8836, the Monitoring and Reporting Programs for Individual Dischargers and Discharger Groups, respectively.’”	language has been added
4.5	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	<i>Conditional Waiver</i> provision A.8 (now A.11) must be amended to ensure that compliance with water quality objectives is determined based on the monitoring data from the receiving water. Consequently, we recommend that the language be amended as follows: ‘If the monitoring results <u>from the receiving waters</u> exceed the receiving water limits in Section G and Appendices 1 and 2 of this order...’”	Regional Board staff has revised Finding #29 to clarify that monitoring will occur in the receiving water (see above). Regional Board staff has noted the recommended language change to Provision A.8 (now A.11) of the Order. The specific language recommended here has not been used because monitoring results, which are not required, must also be submitted and exceedances in those measures may be used to determine compliance, even if they are collected outside receiving waters.
4.6	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	A.8 (now A.10) must also be amended to allow for sometime between the submittal of the annual monitoring report and the submittal of a WQMP. We recommend that the WQMP be required within 180 days after submittal of the annual monitoring report.	Regional Board staff agrees with the recommended timeline. The current Conditional Waiver requires a WQMP 6 months (180 days) after submittal of the AMR, if necessary. See both Provision A.10 and Table 1, Schedule for Discharger Tasks.
4.7	Ventura County Farm Bureau, Ventura County Agricultural Association,	4/5/05	The condition expressed in A.8(b) [now A.11(b)] suggests that best management practices are <i>promulgated</i> by the Natural Resources Conservation Service (NRCS) and the University of California Cooperative Extension, which implies that they have regulatory standing. Neither the	Regional Board staff agrees with the comment and has changed the language of the Provision as recommended.

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	Association of Water Agencies of Ventura County.		NRCS, nor the University of California Cooperative Extension has regulatory authority regarding the promulgation of best management practices. Consequently, we recommend that the word “promulgated” be replaced with the word “recommended.”	
4.8	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	Finally, with regard to this condition [A.8(b)] [now A.11(b)], it states that any best management practices not recommended by the two service agencies must be approved by the Executive Officer. We do not believe that is realistic or practical. Therefore, we recommend that the Executive Officer’s approval of the management practices be deleted. The Executive Office will already maintain the authority of approving the WQMP, which is supposed to include a description of applicable management practices.	The implementation of the waiver program by board staff necessitates that stakeholder remedies to water quality problems be assessed for efficiency. The Board must ensure that water quality is likely to be affected in a positive manner.
4.9	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	A.10 [now A.13]-Instead of stating that the Discharger Group may terminate coverage, we recommend that the language be amended to state that the Discharger Group notifies the Regional Board of an individual participant’s failure to participate in the Group as originally agreed upon, and that termination from coverage from the <i>Conditional Waiver</i> be issued by the Regional Board. We suggest the following language to remedy any concerns regarding the legally authority of a Discharger Group to issue Notices of Termination. “Administrators of a Discharger Group may also terminate group coverage of an individual by notifying <u>notify</u> the Regional Board of an individual’s failure to participate in the group efforts. The Discharge Group shall not be responsible or liable for individual compliance with the terms of the Conditional Waiver or the Water Code in general. The Discharger Group shall only be responsible for conveying information related to	Regional Board staff agrees with the comment and has made changes to the Waiver that reflect the fact that the Board is responsible for issuing NOTs.

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			an individual is in compliance with the terms of the Conditional Waiver. The Discharger Group shall provide participants at least 30 days notice before informing the Regional Board of <u>the individual's failure to participate in the group efforts. An individual's failure to participate may result in the Regional Board issuing a NOT to the individual discharger. Its intent to terminate the discharger.</u> Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of this Conditional Waiver, unless another Waiver or waste discharge requirements regulate the discharge."	
4.10	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	B.2.(b)-This provision requires that a map clearly showing all of the discharge points from each group participant be submitted with the Notice of Intent. This requirement may be impractical and difficult to implement since agricultural irrigation return flows and agricultural stormwater runoff by definition and nature are nonpoint sources of pollution, thereby implying that there are no distinguishable discharge points. Therefore, this requirement should be deleted.	Regional Board staff agrees that preparation of maps may be burdensome for some growers, but must weigh this against the necessity to identify each potential risk to water quality and ensure that it has been adequately assessed. While it may be impossible to identify discharge points that do not exist, Regional Board staff expects participants in the Conditional Waiver to identify all known discharge points, based on either direct evidence or topographic analysis.
4.11	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	F.1-As discussed previously, monitoring results from receiving waters must be reviewed to determine if water quality objectives are not being met. Therefore, we recommend that this provision be amended as follows: "If the monitoring indicates impairment <u>in the receiving water</u> of a water quality objective, CTR or TMDL load allocation, then the Individual Discharger or Discharger Group shall submit a WQMP in the monitoring report."	Regional Board staff has revised Finding #29 to clarify that monitoring will occur in the receiving water (see above). Regional Board staff has noted the recommended language change to Provision F.1 of the Order and has chosen not to make the recommended language change.
4.12	Ventura County Farm Bureau,	4/5/05	G.1-This provision should also allow Individual Dischargers and Discharger Groups the ability to submit	Regional Board staff agrees with the comment and has added the recommended language to Provision G.1.

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	Ventura County Agricultural Association, Association of Water Agencies of Ventura County.		information and data regarding the quality of water delivered to the growers to determine if the agricultural activities are causing the exceedance of the benchmark receiving water limits. To accommodate this consideration, we recommend the following amendment: The Discharger shall develop and submit a Water quality Management Plan (WQMP) for the Executive Officer's approval if the monitoring results exceed the benchmark receiving water limits. <u>In order to determine if the Individual Discharger or Discharger Group is causing the exceedance of the benchmark receiving water limit, the Individual Discharger or Discharger Group may submit information and/or data regarding the quality of water delivered to the agricultural customers for consideration to determine if a WQMP is required."</u>	
4.13	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	H.5 As discussed previously above, Individual Dischargers and Discharge Groups should be given sometime to prepare a WQMP after submittal of the annual report. We recommended above that the WQMP be required to be submitted within 180 days of the annual report. This permit provision needs to be amended to be consistent with this previous recommendation.	Regional Board staff agrees with the comment and has revised Provision H.5 to reflect the recommended change.
4.14	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	A.1 (This comment actually refers to section II.A of the MRPs)This provision includes a requirement to monitor 50 feet downstream from the location where the discharge(s) enters the receiving water, It may not always be possible or practical to discharge at this point downstream. To ensure that the Discharge Group has the flexibility to locate this monitoring point as the local conditions dictate, we recommend the term, to the extent feasible"be added to the end of the first sentence.	Regional Board staff agrees with the comment. The recommended language was added with some changes. See the first paragraph of Section II.A of the MRPs for the final language.
4.15	Ventura County	4/5/05	Also, in A.1, second paragraph, (This comment actually	Regional Board staff has reviewed the recommended amendment

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	Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.		refers to section II.A of the MRPs) it must be clarified the compliance with objectives is determined in the receiving water. We recommend the following amendment: ‘If results indicate that water quality objectives are exceeded at any <u>monitoring site in a receiving water listed in Appendix 4 that is monitored as part of or in conjunction with this program</u> , monitoring for the constituents of concern shall continue and the monitoring must be expanded upstream in a systematic search for sources.”	and has chosen not to make the recommended change.
4.16	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	Finally, A.1(this comment actually refers to Section II.A of the MRPs) should be amended to clearly indicate that monitoring requirements under the Order can be met for this program by coordinating with other programs. There are many monitoring programs occurring in the Ventura County area and there is an opportunity to coordinate the efforts on a watershed wide basis to avoid duplication and allow the most efficient use of private and public monitoring funds. We recommend the following paragraph be inserted where the Regional Board determines that it is appropriate: ‘Monitoring requirements for the Watershed Receiving Water Quality may be met through the coordination of monitoring programs occurring throughout the country. Other monitoring programs that may qualify include required monitoring for adopted TMDL’s countywide stormwater monitoring and other programs as approved by the Executive Officer.”	Regional Board staff agrees with the comment and has added the following paragraph to the end of Section II.A of the MRPs: ‘Other Regional Board regulatory programs in effect at the time this monitoring is due may contain requirements substantially similar to the requirements of these group monitoring tasks. If such requirements are in place in another regulatory program, the Executive Officer may revise these monitoring tasks to coordinate this group monitoring plan with other regulatory programs.”
4.17	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of	4/5/05	Appendix 3 includes some constituents for which current monitoring in Ventura County Watersheds is already occurring and has not been detected. Because these constituents are not being detected, the inclusion of them in this program is unnecessary. We recommend that Alpha-Endosulfan, Beta-Endosulfan and Atrazine be	Regional Board staff agrees with the comment and has removed the recommended constituents from the list of COC’s to be monitored, Appendix 3.

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	Water Agencies of Ventura County.		deleted from the list of constituents be monitored.	
4.18	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	While this appendix is an example and therefore not a regulatory requirement as to form, it contains two provisions that are not applicable to nonpoint source pollution and should be deleted to avoid confusion, The main provision of concern are suck plans under Section 311 of the Clean Water Act and storm water controls under section 401(p) of the Clean Water Act.	As stated, the appendix is for guidance. [Elizabeth: what appendix?]
4.19	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County	4/5/05	Neither section from the Clean Water Act is directly or legally applicable to agricultural nonpoint sources of pollution. Therefore, the inclusion of these provisions are inappropriate. Section 311 applies to oil spills from watercraft vessels on the ocean. This section clearly does not apply to irrigation return flows and agricultural stormwater in the watershed. Section 402(p) applies to municipal and industrial stormwater discharges and not stormwater from agricultural lands. Therefore, it too is inappropriate to include in the example WQMP.	Agree [Have we since changed the example WQMP?]
4.20	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	While we appreciate the Regional Board staff's efforts to include a schematic to assist in explaining monitoring and compliance point requirements contained in the waiver, the schematic is confusing. Furthermore, it is unable to actually depict some of the discretion that will occur in the development of monitoring and reporting plans. In reality, Discharger Groups will develop a proposed monitoring and reporting plan for consideration by the Executive Officer. In the Executive Officer's approval process, There will be discussions and negotiations on the appropriate monitoring locations. A schematic such as the one provided is unable to predict	Regional Board staff agrees with the comment and has removed the schematic.

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			how those negotiations may occur. Consequently, we recommend that the schematic be deleted altogether to avoid confusion by Discharger Groups.	
4.21	Ventura County Farm Bureau, Ventura County Agricultural Association, Association of Water Agencies of Ventura County.	4/5/05	As mentioned above, the cost analysis does not account for all costs that must be considered in relationship to this program. Besides costs associated with sample collection and laboratory analytical work, there are costs associated with the administration of Discharger Groups development of QAPPs, implementation of BMPs, development of WQMPs and others that must be included for consideration by the Regional Board before adopting this Waiver.	As previously noted, Regional Board staff has revised the cost analysis to account for total program costs.